

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

JAMES THOMAS FARMER, JR.,

Plaintiff,

vs.

Case No. 3:05cv287

BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES,

JUDGE WALTER HERBERT RICE

Defendant.

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (DOC. #8) IN THEIR
ENTIRETY, WITH TWO CLARIFICATIONS; PETITIONER'S
PROTESTS/OBJECTIONS TO SAID JUDICIAL FILINGS (DOC. #10-1,
10-2 AND 11) OVERRULED; PETITIONER'S STATE OF HEALTH (DOC.
#13) ACKNOWLEDGED; JUDGMENT TO ENTER IN FAVOR OF
DEFENDANT AND AGAINST PLAINTIFF HEREIN, DISMISSING THE
CAPTIONED CAUSE FOR LACK OF THIS COURT'S SUBJECT MATTER
JURISDICTION, PURSUANT TO FED. R. CIV. P. 12(b)(1), AND, IN THE
ALTERNATIVE, GRANTING SUMMARY JUDGMENT IN FAVOR OF THE
DEFENDANT AND AGAINST THE PLAINTIFF; TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth by the United States Magistrate Judge, in her Report and Recommendations filed July 18, 2006 (Doc. #8), as well as upon a thorough *de novo* review of this Court's file, the applicable law and the Defendant's Memorandum in Opposition to Plaintiff's Objections to said judicial filing (Doc. #12), said Report and Recommendations,

with two specific clarifications, are adopted in their entirety. The Plaintiff's Protests/Objections to said judicial filing (Docs. #10-1, #10-2 and #11) are overruled. The Defendant's Motion to Dismiss for lack of subject matter jurisdiction or, in the alternative, for summary judgment (Doc. #2) is sustained, as to both branches. Judgment will be ordered entered in favor of the Defendant and against Plaintiff herein, dismissing the captioned cause for lack of this Court's subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), and, in the alternative, in favor of the Defendant and against Plaintiff herein, granting Defendant's Motion for Summary Judgment.

In ruling as aforesaid, this Court makes the following non-exclusive, observations:

1. By way of clarification, this Court concurs with Defendant that Plaintiff's Petition seeking judicial review was filed on August 25, 2005, some 62 days after he received the final notice. Moreover, this Court concludes that Plaintiff did not "appeal" the Hearing Officer's Report. In so concluding, this Court adopts the Defendant's chronological scenario. Doc. #12 at 1-2.

2. This Court sympathizes with the Plaintiff's precarious state of health. However, given the fact that the captioned cause is in a position whereby this Court can rule upon a Magistrate Judge's Recommendation, a decision based upon a full briefing of the Defendant's Motion to Dismiss or, in the alternative, for summary judgment (Doc. #2), and, further, given that the briefing schedule has

expired for any further memoranda on the subject of the Magistrate Judge's Report and Recommendations, no further filings by Plaintiff and, most certainly, no submission of evidence would be allowed at this time.

/s/ Walter Herbert Rice

September 26, 2006

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

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